

#### § 1187.4

the related acquisition transaction (under 49 U.S.C. 11343–11344 or 10926), applicants also shall serve a copy of the temporary authority application on all parties of record in the related transaction as of the date of the filing.

#### § 1187.4 Commission action.

(a) Where an application for temporary authority is filed concurrently with the related acquisition application or petition for exemption, notice of filing of the temporary authority application will appear in the published notice of the corresponding permanent application or petition.

(b) The temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon as possible after filing. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A temporary authority request may be acted upon before the publication of the related permanent application or petition for exemption.

#### § 1187.5 Protests.

(a) *Who can oppose an application.* A protest to an application for temporary authority filed under these rules may be filed only by persons who oppose or intend to oppose the related permanent application or petition for exemption filed under 49 U.S.C. 11343–11344 or 10926.

(b) *Contents of a protest.* A protest to an application for temporary authority shall be in writing. The protest shall state the protestant's interest in the proceeding and the specific grounds on which protestant relies in opposing the temporary authority application. The protest also shall indicate that a copy has been served on applicants' representative(s).

(c) *To whom the protest is sent.* The original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. A copy of the protest shall be served on applicants' representative(s).

#### 49 CFR Ch. X (10–1–96 Edition)

### PART 1188—GROSS OPERATING REVENUES OF CARRIERS INVOLVED IN FINANCE PROCEEDINGS

Sec.

1188.1 Computation of gross operating revenues of carriers involved in unifications.

1188.2 Deduction of revenues from sources other than regulated transportation.

AUTHORITY: 5 U.S.C. 559 and 49 U.S.C. 10321, 11341, 11343, 11344, and 11345a.

SOURCE: 54 FR 35346, Aug. 25, 1989, unless otherwise noted.

#### § 1188.1 Computation of gross operating revenues of carriers involved in unifications.

In proceedings involving consolidation, merger, or acquisition of control of motor carriers under 49 U.S.C. 11343, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to subchapter II of chapter 105 of the Act shall be deemed to have exceeded \$2 million for the period of 12 consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, within the meaning of 49 U.S.C. 11343(d)(1), unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by 49 U.S.C. 11145, showing annual gross operating revenues from motor carrier operations totaling more than \$2 million, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than \$2 million; or

(c) A reasonable estimate of:

(1) The annual gross operating revenues of any carrier which sold or otherwise disposed of any portion of its operating rights or which began new operations or extended existing operations subsequent to the end of the preceding calendar year; and

(2) The reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than \$2 million.

**§ 1188.2 Deduction of revenues from sources other than regulated transportation.**

(a) In determining whether a proposed transaction is subject to the provisions of 49 U.S.C. 11343, applicant motor carriers and their affiliate motor carriers must select the same 12-month period and indicate the 12-month period selected, as provided in § 1188.1, and must disclose the gross revenues received by each such carrier during the critical period selected and

the revenues derived from sources other than transportation subject to subchapter II of chapter 105 of the Act. Such latter revenues may be deducted from the gross revenues for the purpose of determining jurisdiction.

(b) Applicants shall show the amounts which they claim should be deducted, the sources from which the revenues were derived, and the circumstances under which transportation performed is claimed not to have been subject to subchapter II of chapter 105 of the Act, in transfer proceedings under 49 CFR part 1181 or in support of a motion for dismissal of proceedings under 49 CFR part 1182 or 1186.

(c) Applicants shall not be required to show that the revenues computed under § 1188.1 were derived from transportation subject to subchapter II of chapter 105 of the Act.

**PARTS 1189-1199—[RESERVED]**